Award No. 3896

Docket No. 3918

2-PRR-MA-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Machinists)

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

(1) — That under the controlling agreements the Carrier unjustly deprived Mechanic Welder H. A. Burson, Fort Wayne, Indiana Shops, from exercising his welder's seniority over, and displacing a junior Mechanic Welder at the Fort Wayne, Indiana East Car Shops on July 5, 1956.

(2) — That accordingly the Carrier be ordered to compensate H. A. Burson for all monetary loss, i.e. eight (8) hours at the Mechanics Grade "E" straight time rate of pay for each work day retroactive to July 5, 1956, until placed on Mechanic Welders' position.

(3) — That the Carrier be ordered to permit H. A. Burson, to exercise his Mechanic Welders' seniority on any junior Mechanic Welder, at the Fort Wayne Shops, Indiana, in accordance with the Welders' Agreement dated July 28, 1941 and Rule 5-F-6 of the current Agreement.

EMPLOYES' STATEMENT OF FACTS: Mechanic Welder, H. A. Burson, hereinafter referred to as the claimant, was regularly employed and assigned as a machinist welder, Fort Wayne, Back Shops, Indiana. The claimant has a mechanic welder's (Double asterisk) seniority date of November 16, 1936.

On July 2, 1956, a notice was posted in the Fort Wayne Back Shops of the Pennsylvania Railroad (hereinafter referred to as the carrier) that effective July 5, 1956, the machinist welder position held by the claimant was abolished. As a result of this abolishment, the claimant prepared a bump slip advising of his intention to exercise his seniority by displacing a junior (single asterisk) welder, M. H. L. Manley, (sen-

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claims of the employes in this case would require the Board to disregard the agreement between the parties thereto and impose upon the carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has not jurisdiction or authority to take such action.

CONCLUSION

The carrier has shown that claimant had no right to displace onto the freight car repairman welder's job on July 6, 1956; that no rule of the applicable agreement provides for the penalty payment of eight hours as requested by the employes in this dispute; that the claimant is entitled only to the monetary loss for the period involved; that he is not entitled to losses incurred by his own acts or those of his representatives; and that the position of the carrier in this dispute is amply supported by previous awards of your Honorable Board and by the principles of contract law.

Therefore, the carrier respectfully submits that the claim of the employes in this matter as presented to your Honorable Board should be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

In this case the Division finds that the agreement effective August 1, 1941 (together with the schedule rules therein referred to) is controlling in respect to the claim here involved.

Then, in determining whether on July 5, 1956, carrier wrongfully denied two-asterisk claimant welder (machinist craft) permission to displace one-asterisk welder Manley (carman craft) on a freight car repairman welder position, the first question to be answered is this: What relative rights does said agreement confer on the two men? Or more specifically, under that agreement did claimant have the right to "bump" into a position that included welding plus other incidental work, in a craft other than his own, as well as into a position that was 100 percent weld-

ing? If the answer to this question is "yes", then there are no further questions, and claim (1) requires sustention. If the answer, however, is "no", that is, if under said agreement claimant had displacement rights only in respect to 100 percent welding jobs, one additional question, and it is one of fact, must be faced: What was the nature of the position Manley had been filling — was it mixed or was it 100 percent welding?

As to the first question, initial consideration must be given to the general intendment of the 1941 agreement. Here was a seniority roster of men who, it appears from the record, had been doing nothing but welding. It was decided to discontinue said roster and to allocate said welders among the several crafts. This having been done pursuant to the provisions of Section 10 of said agreement, Section 11 was negotiated in order to define and preserve the bidding and "bumping" rights of the former welder-roster men in relation to each other and to newly define such rights in relation to the non-welder employes in the crafts to which the welders had been apportioned.

As to the latter, paragraph 11 (d) says that a one-asterisk welder may displace a junior non-welder man in the former's own craft, while paragraph 11(f) says that a two-asterisk welder may not do so; within his own craft a two-asterisk welder may bump only another welder.

The bidding and bumping rights of former welder-roster men in relation to each other (after said employes have been allocated among the crafts) must be discovered from a study of paragraphs 11(a), (b), (c), and (e). The first of these must be taken to say that the men who as of August 1, 1941, were welders on the old seniority roster will stay welders within their respective crafts after allocation.

Paragraph 11(b) says that the schedule provisions for exercise of seniority will apply to two kinds of welding positions: (1) new jobs that include welding with possible other work; and (2) those that were filled by men from the former all-welding roster. Nothing in this paragraph as such may be held to support carrier's contention that a two-asterisk man may bid or bump only into a 100 percent welding position.

Paragraphs 11(c) and (e) do not deal directly with the bidding and bumping rights of one-asterisk and two-asterisk men. They do deal with the bumping rights of both groups indirectly, through speaking about the protection rights of each group. Of the two paragraphs, 11(c) is the one that is relevant here.

Carrier maintains in effect, that the use of the word "Welder" (with a capital "W") in said paragraph and the lack of any language about mixed welding jobs means that a one-asterisk welder like Manley may not be displaced by a two-asterisk welder like claimant unless the former's work is 100 percent welding. The Division finds itself unable to

agree with this interpretation. It is a settled rule of contract construction that when two or more interpretations of a provision are possible, the more reasonable one must be taken as expressing the parties' intent. If it is accepted, as stated above, that one main general purpose of the 1941 agreement was to preserve the seniority rights of the former welder-roster men in relation to each other, than carrier's view could produce an unreasonable result: All that carrier would have to do would be to create nothing but mixed welding jobs in the various crafts; and then no one or two-asterisk man could bump another former welder-roster employe anywhere. The Division is pushed to the conclusion that the following interpretation is more reasonable: The word "Welder" in paragraph 11(c) refers to any man who used to be on the old welder roster. It does not matter whether he is now doing mainly or wholly welding work; he is subject to the rights of his former welding "buddies" and this conclusion is fortified by the fact that the last dozen words of paragraph 11(c) make clear said rights may be exercised across craft lines.

In view of the last statement, "across craft lines", just above, paragraph 11(f) merits special additional comment. It is possible to interpret the language of 11(f) in two ways: (1) a two-asterisk welder can exercise his seniority only in respect to another welder, and the latter must be only in his own craft. (2) So far as his own craft is concerned, a two-asterisk welder may not exercise his seniority in respect to any employe but another welder. This ambiguity arises from the position of the phrase "in their craft or class" in the sentence which is paragraph 11(f). The Division finds that for clarity's sake said phrase must be read as if placed at the beginning rather than the end of said sentence. If this is done, it becomes plain that the second interpretation is the correct one. Only in this way can an interpretation of 11(f) be made consistent with (1) the clear meaning of 11(d) in respect to one-asterisk welders; (2) the previously stated general purpose of the 1941 agreement; and (3) the above-stated interpretation of paragraph 11(c). In short, the provisions of paragraph 11(f) do not prohibit a former welder-roster man from displacing another such man who is now in another craft.

Having thus answered the original question affirmatively, the Division need not consider whether Manley's position was in fact mainly or wholly welding. A sustaining award to Claims (1) and (3) is required here.

Claim (2) remains to be considered. On this, the Division directs carrier to make claimant whole by paying him, for the period mentioned in Claim (2), his net monetary loss, same to be calculated by subtracting the amount claimant actually earned in employment with carrier and/or other employers during said period from the amount he would have earned at straight time during said period if at its beginning carrier had properly permitted him to displace a junior mechanic welder.

AWARD

Claims (1) and (3) sustained.

Claim (2) disposed of per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1961.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3896 PRR-MA

This award is in error —

(1) in its construction of the intent of the Western Welding Agreement of August 1, 1941, and

(2) in the manner in which the claim is sustained in the light of facts of record.

The majority holds that the general intent of the 1941 agreement was to preserve the seniority rights of the former welder roster men, and therefore concludes that any former welder may bump any of his former welding "buddies" who were junior to him on the welder roster in whatever craft they may be found. This interpretation ignores the fact that the fundamental purpose of the Western Welding Agreement was to break up the old welder roster and to establish in lieu thereof the performance of welding work by various crafts, including the assimilation of welding work into positions which also had other craft duties. Thus, paragraph 11(b) generally contemplated that new positions, including welding work, would be advertised in the respective crafts, as would vacancies in "positions of Welder" when the incumbents left them. The true intent was not to treat any position having any welding work as a position of welder but was only to preserve to former welders those positions which consisted of 100% welding work.

With respect to the claims as sustained, it was a fact of record that so far as carmen were concerned the 1941 agreement was abrogated effective November 1, 1956, by agreement between the new representatives of the carmen, the Transport Workers Union and the Carrier. After that date carmen (including Manley) were no longer subject to the 1941 agreement and any asterisks were removed from men having seniority on the carmen rosters. Consequently, any rights of men designated by asterisks to bump others was negotiated away. These changes were properly carried out by the duly authorized representatives of the carmen craft, who certainly had authority under the Railway Labor Act to modify or control the exercise of seniority in the craft they represented. Consequently, it is error for the majority to sustain the claim for monetary loss beyond November 1, 1956 and to sustain claim (3) even assum-

ing that its interpretation of the 1941 agreement were correct. It is not possible under present conditions for the carrier to comply with the award as rendered.

/s/ **David H. Hicks**
D. H. Hicks

/s/ **F. P. Butler**
F. P. Butler

/s/ **H. K. Hagerman**
H. K. Hagerman

/s/ **P. R. Humphreys**
P. R. Humphreys

/s/ **W. B. Jones**
W. B. Jones